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FILED 07 SEP 27 12:13 JSDC-ORP

Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ERIK PLAZA,

Plaintiff,

v.

CITY OF GRESHAM, Police Chief CARLA
PILUSO, Sergeant MICHAEL AMEND,
Officer MATTHEW GALBREATH, Officer
CHARLES SKEEHAN,

Defendants.

Case No.

CV '07 - 1442 -

HU

DEFENDANTS' NOTICE OF REMOVAL

TO: Judges of the United States District Court for the District of Oregon;
Clerk of the Circuit Court of the State of Oregon for the County of Multnomah;
and Leah Greenwald and Benjamin Haile, Attorneys for Plaintiff

PLEASE TAKE NOTICE that defendants City of Gresham, Carla Piluso, Michael

Amend, Matthew Galbreath, and Charles Skeehan hereby remove this action from the

Circuit Court of the State of Oregon for the County of Multnomah, to the United States

Page 1 - DEFENDANTS' NOTICE OF REMOVAL

MILLER & WAGNER LLP
Trial Lawyers
2210 N.W. Flanders Street
Portland, Oregon 97210-3408
(503) 299-6116

Rec # 17646

District Court for the District of Oregon in Portland, Oregon.

1. On or about September 5, 2007 this action was filed against all defendants in the Circuit Court for the State of Oregon for the County of Multnomah entitled *Erik Plaza, Plaintiff, vs. City of Gresham, Police Chief Carla Piluso, Sergeant Michael Amend, Officer Matthew Galbreath, Officer, Charles Skeehan, defendants*, Multnomah County Circuit Court Case No. 0709-10071. A copy of the Summons and Complaint in this action are attached to this Notice and constitute all process, pleadings and orders received by defendants in that action up to the present date.

2. Defendants were served with the Summons and Complaint on September 7, 2007. This Notice of Removal is filed within 30 days after service of process of the Complaint.

3. This action is of a civil nature over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1331, in that plaintiff alleges constitutional civil rights violations and damages. Because 42 U.S.C. § 1983 provides the only means of challenging those alleged civil rights violations, the State Court action is removable.

WHEREFORE, defendants City of Gresham, Carla Piluso, Michael Amend, Matthew Galbreath and Charles Skeehan give notice of the removal of this action from

///

///

///

the Circuit Court of the State of Oregon for the County of Multnomah to this Court pursuant to 28 U.S.C. § 1441 and § 1446.

DATED this 27th day of September, 2007.

MILLER & WAGNER LLP

By: 

David C. Lewis, OSB #95334
Of Attorneys for Defendants
(503) 299-6116

Trial Attorney:

Robert S. Wagner, OSB #84411

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CERTIFIED TRUE COPY

BWH

ERIK PLAZA,

Case No. 0709-10071

Plaintiff,

vs.

SUMMONS

CITY OF GRESHAM, Police Chief CARLA PILUSO, Sergeant
MICHAEL AMEND, Officer MATTHEW GALBREATH, Officer
CHARLES SKEEHAN.

Defendants.

To: City of Gresham
C/o City Attorney Susan G. Bischoff
1333 NW Eastman Parkway
Gresham, OR 97030

You are required to appear and defend the complaint filed against you in this matter within thirty (30) days from the date of service of this summons upon you. If you fail to do so, plaintiff(s) will apply to the court for the relief demanded in the complaint.

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

Benjamin Haile

BENJAMIN HAILE
Oregon State Bar # 04066
Of Attorneys for Plaintiff(s)

STATE OF OREGON, County of Multnomah) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons and complaint in the above-entitled action. I hereby declare that the above is true to the best of my knowledge and belief. I understand that this document is made for use as evidence in court and is subject to penalty of perjury.

Benjamin Haile
Attorney for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS:

You are directed to serve a true copy of this summons, together with a true copy of the complaint, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed. You are further directed to make your proof of service on the reverse side of this summons or upon a separate similar document which you shall attach to this summons.

Haile Greenwald LLP
Attorneys for Petitioner(s)
620 SW Main, Suite 616
Portland, Oregon 97205
Telephone: (503) 224-3240
FAX: (503) 223-4518

Benjamin Haile
Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CERTIFIED TRUE COPY

ERIK PLAZA,

Case No. 0700-10071

Plaintiff,

vs.

SUMMONS

CITY OF GRESHAM, Police Chief CARLA PILUSO, Sergeant
MICHAEL AMEND, Officer MATTHEW GALBREATH, Officer
CHARLES SKEEHAN.

Defendants.

To: Police Chief Carla Piluso
Grasham Police Department
1333 NW Eastman Parkway
Grasham, OR 97030

You are required to appear and defend the complaint filed against you in this matter within thirty (30) days from the date of service of this summons upon you. If you fail to do so, plaintiff(s) will apply to the court for the relief demanded in the complaint.

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY

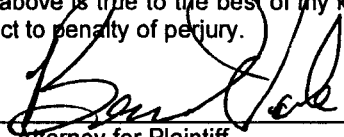
You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

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BENJAMIN HAILE
Oregon State Bar # 04066
Of Attorneys for Plaintiff(s)

STATE OF OREGON, County of Multnomah) ss.

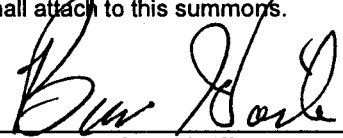
I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons and complaint in the above-entitled action. I hereby declare that the above is true to the best of my knowledge and belief. I understand that this document is made for use as evidence in court and is subject to penalty of perjury.


Attorney for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS:

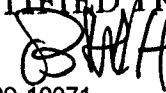
You are directed to serve a true copy of this summons, together with a true copy of the complaint, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed. You are further directed to make your proof of service on the reverse side of this summons or upon a separate similar document which you shall attach to this summons.

Haile Greenwald LLP
Attorneys for Petitioner(s)
1120 SW Main, Suite 616
Portland, Oregon 97205
Telephone: (503) 224-3240
FAX: (503) 223-4518


Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CERTIFIED TRUE COPY



Case No. 0709-10071

ERIK PLAZA,

Plaintiff,

vs.

SUMMONS

CITY OF GRESHAM, Police Chief CARLA PILUSO, Sergeant
MICHAEL AMEND, Officer MATTHEW GALBREATH, Officer
CHARLES SKEEHAN.

Defendants.

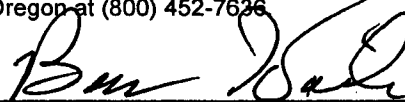
To: Sergeant Michael Amend
Gresham Police Department
1303 NW Eastman Parkway
Gresham, OR 97030

You are required to appear and defend the complaint filed against you in this matter within thirty (30) days from the date of service of this summons upon you. If you fail to do so, plaintiff(s) will apply to the court for the relief demanded in the complaint.

NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY

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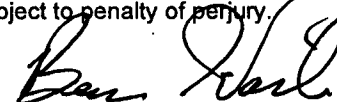
If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.



BENJAMIN HAILE
Oregon State Bar # 04066
Of Attorneys for Plaintiff(s)

STATE OF OREGON, County of Multnomah) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons and complaint in the above-entitled action. I hereby declare that the above is true to the best of my knowledge and belief. I understand that this document is made for use as evidence in court and is subject to penalty of perjury.

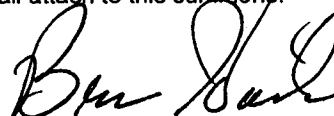


Attorney for Plaintiff

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS:

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Haile Greenwald LLP
Attorneys for Petitioner(s)
620 SW Main, Suite 616
Portland, Oregon 97205
Telephone: (503) 224-3240
FAX: (503) 223-4518



Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON **CERTIFIED TRUE COPY**
FOR THE COUNTY OF MULTNOMAH

BWH

ERIK PLAZA,

Case No. 0709-10071

Plaintiff,

vs.

SUMMONS

CITY OF GRESHAM, Police Chief CARLA PILUSO, Sergeant
MICHAEL AMEND, Officer MATTHEW GALBREATH, Officer
CHARLES SKEEHAN.

Defendants.

To: Officer Matthew Galbreath
Gresham Police Department
1333 NW Eastman Parkway
Gresham, OR 97030

44158

You are required to appear and defend the complaint filed against you in this matter within thirty (30) days from the date of service of this summons upon you. If you fail to do so, plaintiff(s) will apply to the court for the relief demanded in the complaint.

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Ben Haile

BENJAMIN HAILE
Oregon State Bar # 04066
Of Attorneys for Plaintiff(s)

STATE OF OREGON, County of Multnomah) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons and complaint in the above-entitled action. I hereby declare that the above is true to the best of my knowledge and belief. I understand that this document is made for use as evidence in court and is subject to penalty of perjury.

Ben Haile

Attorney for Plaintiff

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Haile Greenwald LLP
Attorneys for Petitioner(s)
320 SW Main, Suite 616
Portland, Oregon 97205
Telephone: (503) 224-3240
FAX: (503) 223-4518

Ben Haile

Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CERTIFIED TRUE COPY

Blair

ERIK PLAZA,

Case No. 0709-10071

Plaintiff,

vs.

SUMMONS

CITY OF GRESHAM, Police Chief CARLA PILUSO, Sergeant
MICHAEL AMEND, Officer MATTHEW GALBREATH, Officer
CHARLES SKEEHAN.

Defendants.

To: Officer Charles Skeehan
Gresham Police Department
1333 NW Eastman Parkway
Gresham, OR 97030

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Ben Haile

BENJAMIN HAILE
Oregon State Bar # 04066
Of Attorneys for Plaintiff(s)

STATE OF OREGON, County of Multnomah) ss.

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Ben Haile

Attorney for Plaintiff

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620 SW Main, Suite 616
Portland, Oregon 97205
Telephone: (503) 224-3240
FAX: (503) 223-4518

Ben Haile

Attorney for Plaintiff

14-Sep-2007 09:52am From:TRIDEN URANCE SERVICES
SEP-10-2007 10:01

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SEP07/09/01 P.004/12

RECEIVED
 SEP - 7 2007
 GRESHAM CITY
 ATTORNEY'S OFFICE

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

ERIK PLAZA,

Plaintiff,

vs.

CITY OF GRESHAM, Police Chief CARLA
 PILUSO, Sergeant MICHAEL AMEND,
 Officer MATTHEW GALBREATH, Officer
 CHARLES SKEEHAN.

Defendants.

) Case No.: **0709-10071**
)
) COMPLAINT FOR SEIZURE BY
) EXCESSIVE FORCE IN VIOLATION OF
) THE FOURTH AMENDMENT, ABUSE OF
) PROCESS AND MALICIOUS
) PROSECUTION
)
) CLAIM SUBJECT TO MANDATORY
) ARBITRATION

INTRODUCTION

1.

On the evening of October 9, 2005 Erik Plaza attended a birthday celebration at a community center in the City of Gresham. The police were dispatched to the community center for a disturbance. Upon arrival, the police ordered the crowd to disperse. When Mr. Plaza was exiting the community center, he was beaten and arrested by Gresham Police officers. Mr. Plaza now brings claims for assault, battery and Constitutional violations.

2.

Mr. Plaza seeks to hold accountable the City of Gresham and the individual officers in the Gresham Police Department who committed these unlawful and unconstitutional acts against him.

Hull & Greenwald, LLP
 610 SW Main Street, Suite 616
 Portland OR 97205
 (503)228-1889

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T-690 P.006/013 F-607
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8.

At all material times Defendant Officer Charles Skeeahan (hereinafter Officer Skeeahan) was working under color of law for the City with the Gresham Police Department.

9.

At all times mentioned herein Sergeant Amend, Officer Galbreath and Officer Skeeahan were acting in the course and scope of their employment pursuant to authority delegated or conferred by the City in doing or failing to do the things complained of herein. They are sued in their individual capacities.

THE FACTS

10.

On the evening of October 9, 2005, Erik Plaza went to a birthday celebration located at 21512 SE Stark Street, which is a community center in Multnomah County, Oregon.

11.

The police were dispatched to the location for a disturbance. Upon arrival, the police ordered the crowd to disperse.

12.

As Mr. Plaza exited the building, an officer grabbed him and, as a result, broke his necklace, causing it to fall to the ground. Mr. Plaza received this necklace as a gift from his father and thus it has great sentimental value.

13.

When Mr. Plaza attempted to look on the ground for the necklace, Sergeant Amend applied pepper spray to his face. Sergeant Amend proclaimed that the need to apply pepper spray was because Mr. Plaza was not leaving the premises.

//

//

Halle Greenwald, LLP
 610 SW Main Street, Suite 616
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 (503)228-1889

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1 14.

2 Officer Skeehan observed Sergeant Amend and Officer Galbreath with Mr. Plaza.
3 Because Officer Skeehan feared other family members might get involved, he applied the taser
4 to Mr. Plaza.

5 15.

6 At this point, Officer Galbreath pushed Mr. Plaza to the ground. Mr. Plaza's face was
7 pinned against the rough pavement and his arms were stuck beneath him due to the pressure.
8 Officer Galbreath then applied strikes to his chest and shoulder blade for allegedly physically
9 resisting arrest, which he explained as "failing to comply with getting his hands up."

10 16.

11 As a result, Mr. Plaza suffered injuries. Specifically, Mr. Plaza had contusions,
12 abrasions, bruises and swelling on the right side of his head and cheek; he had abrasions and
13 swelling to his scalp; he had contusions, abrasions, bruises and swelling on his back; he had
14 bruises, abrasions and swelling on both knees. In addition, Mr. Plaza experienced pain in his
15 wrists from the handcuffs.

16 17.

17 Mr. Plaza violated no laws, presented no danger to the officers, and did not resist the
18 officers at any time. The force they used against him was unreasonable and unlawful.

19 18.

20 Mr. Plaza was charged with Resisting Arrest, Disorderly Conduct and Criminal Trespass.
21 On January 23, 2007, Mr. Plaza was acquitted of Resisting Arrest and Disorderly Conduct by a
22 jury, and the Court dismissed the Criminal Trespass charge.

23 19.

24 The law states, for resisting arrest, that "'resists' means the use or threatened use of
25 violence, physical force or any other means that creates a substantial risk of physical

Haile Greenwald, LLP
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1 injury...Passive resistance does not constitute behavior intended to prevent being taken into
2 custody."

20.

4 At Mr. Plaza's criminal trial, the District Attorney asked Officer Galbreath about a risk of
5 injury, which is required under the law for the crime of resisting arrest, and he testified under
6 oath that the risk of injury was Mr. Plaza not leaving and not complying. He further testified that
7 there was a risk of injury to him because he had to "escalate force."

21.

9 As a result, Plaintiff suffered the economic and non-economic damages described below
10 in the paragraphs dedicated to All Claims.

THE CLAIMS

FIRST CLAIM FOR RELIEF:

Fourth and Fourteenth Amendment; 42 U.S.C. § 1983

22.

16 Paragraphs 1 through 21 are incorporated by reference herein.

23.

18 At all times herein mentioned Serecant Amend. Officers Skeeahan and Galbreath were the
19 agents and employees of the Gresham Police Department, and in doing the things alleged herein,
20 were acting within the course and scope of their employment.

24.

22 The conduct of Serecant Amend. Officers Skeeahan and Galbreath in violently seizing Mr.
23 Plaza by pushing him into the rough pavement, hitting and tasing him, violated his right under
24 the Fourth Amendment to the United States Constitution to be free from excessive force when
25 being seized by public officials.

1: alle Greenwald, LLP
620 SW Main Street, Suite 616
Portland OR 97205
(503)228-1889

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1 25.

2 This conduct also constitutes summary punishment without due process of law, in
3 violation of the Fourteenth Amendment.

4 26.

5 A cause of action for these violations of constitutional rights is provided by 42 U.S.C. §
6 1983.

7 27.

8 The actions of Defendants in violation of Mr. Plaza's constitutional rights were the direct
9 and proximate cause of bodily injury, pain, suffering, mental distress, humiliation, loss of liberty,
10 and legal expenses.

11 28.

12 Pursuant to 42 U.S.C. § 1983, Mr. Plaza claims compensatory damages from Sergeant
13 Amend, Officers Skeehan and Galbreath; and compensatory damages from the City for violation
14 of his constitutional rights under color of law.

15 29.

16 As a result, Plaintiff suffered the economic and non-economic damages described below
17 in the paragraphs dedicated to All Claims.

18
19 **SECOND CLAIM FOR RELIEF:**

20 **Abuse of Process; 42 U.S.C. § 1983**

21 30.

22 Paragraphs 1 through 29 are incorporated by reference herein.

23 //

24 //

25 //

Paul Greenwald, LLP
620 SW Main Street, Suite 616
Portland OR 97205
(503)228-1889

14-Sep-2007 09:53am From:TRIDEN: URANCE SERVICES
5:11-10-2007 1:51:07

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1 31.

2 Sergeant Amend, Officers Skeeahan and Galbreath had an ulterior purpose, unrelated to
3 the process, when they arrested Mr. Plaza, which was to justify their own unlawful and
4 unreasonable actions.

5 32.

6 To further this ulterior purpose, the officers intentionally, improperly, and maliciously
7 initiated criminal process against the Plaintiff.

8 33.

9 As a result, Plaintiff suffered the economic and non-economic damages described below
10 in the paragraphs dedicated to All Claims.

11
12 **THIRD CLAIM FOR RELIEF:**

13 **Malicious Prosecution: 42 U.S.C. §1983**

14 34.

15 Paragraphs 1 through 33 are incorporated by reference herein.

16 35.

17 Sergeant Amend, Officers Skeeahan and Galbreath initiated the arrest and criminal
18 charges against Mr. Plaza

19 36.

20 The criminal case was legally terminated in Mr. Plaza's favor.

21 37.

22 The arrest and criminal charges brought against him were without probable cause.

23 38.

24 The arrest and criminal charges brought against him were initiated with malice. There
25 was an existence of a primary purpose other than that of securing an adjudication of the claim.

Mail: Greenwald, LLP
620 SW Main Street, Suite 616
Portland OR 97205
(503)228-1889

14-Sep-2007 09:53am From-TRIDENT URANCE SERVICES
SEP-18-2007 13:09

2103428193

T-680 P.011/013 F-607
3035573031 P.10/12

1 39.

2 Mr. Plaza suffered a special injury. He was arrested and seized.

3 40.

4 As a result, Plaintiff suffered the economic and non-economic damages described below
5 in the paragraphs dedicated to All Claims.

6
7 **FOURTH CLAIM FOR RELIEF:**

8 **Constitutional Rights Violations by the City of Portland and Chief Piluso**

9 **Due to Failure to Adequately Train and Supervise.**

10
11 41.

12 Paragraphs 1 through 40 are incorporated by reference herein.

13 42.

14 The City and Chief Piluso, in her supervisory capacity as police chief, recklessly failed to
15 adequately supervise, train, and discipline other members of the Gresham Police Department
16 regarding public political demonstrations. The City and Chief Piluso have been deliberately
17 indifferent to the need for training.

18 43.

19 As a direct and proximate result of the failure of the City and Chief Piluso to properly
20 train, supervise and discipline officers, Mr. Plaza was deprived of his Fourth and Fourteenth
21 Amendment rights to be free from excessive force and summary punishment and his right to be
22 free from abuse of process.

23 ///

24 ///

25 ///

Haile Greenwald, LLP
620 SW Main Street, Suite 616
Portland OR 97205
(503)228-1889

14-Sep-2007 09:53am From: TRIDENT JRANCE SERVICES
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5036573031 P.11/12

1 44.

2 As a direct, proximate, and foreseeable result of the violation of the Plaintiff's
3 constitutional rights, the Plaintiff suffered the physical and emotional injuries and humiliation
4 described above.

5 45.

6 As a result, Plaintiff suffered the economic and non-economic damages described below
7 in the paragraphs dedicated to All Claims.

8
9 **ALL COUNTS**

10 46.

11 Plaintiff is entitled to an award of attorneys fees and costs, pursuant to 42 U.S.C. §1988.

12 47.

13 Plaintiff suffered non-economic injury in the form of pain suffering, humiliation, and
14 deprivation of constitutional rights worth \$30,000.

15 48.

16 Plaintiff suffered economic damages in the form of medical expenses totaling \$1771.42
17 and lost wages totaling \$720.

18 49.

19 The Circuit Court of the State of Oregon for the County of Multnomah has jurisdiction of
20 the all the above listed causes of action arising under federal and state law as a court of general
21 jurisdiction.

22 50.

23 Plaintiff requests a trial by a jury of his peers on his claims for relief.

24 ///

25 ///

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Portland OR 97205
(503)228-1689

14-Sep-2007 09:53am From-TRIDENT JRANCE SERVICES

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5035573031 P.12/12

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1 **PRAYER FOR RELIEF**

2 WHEREFORE Plaintiff prays for judgment as follows:

- 3 1. Findings and Orders against Sergeant Amend, Officer Skeeahan and Officer Galbreath
4 that they violated the protected constitutional rights of Plaintiff, causing him non-economic
5 damages and economic damages;
- 6 2. Findings and Orders that the municipal policies were defective as applied and caused
7 Constitutional deprivations to be suffered by Plaintiff and injunctive relief is required to prevent
8 recurring violations;
- 9 3. An award of non-economic damages in an amount of \$30,000;
- 10 4. An award of economic damages for medical expenses in the amount of \$1771.42 and
11 for lost wages in the amount of \$720.
- 12 5. Plaintiff's costs, disbursements and attorney fees.
- 13 6. Such other and further relief, including all appropriate equitable relief, as the Court
14 may deem proper and just.

15
16 Dated this 5th day of September, 2007.

17 */s/ Leah Greenwald*

18 Leah Greenwald OSB #04297
19 Haile Greenwald, LLP

20 */s/ Benjamin Haile*

21 Benjamin Haile OSB #04066
22 Haile Greenwald, LLP

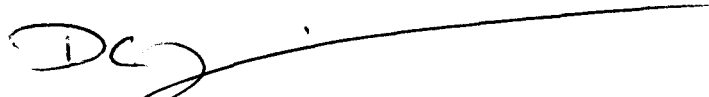
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Haile Greenwald, LLP
120 SW Main Street, Suite 616
Portland OR 97205
(503)228-1889

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September, 2007, I served the foregoing DEFENDANTS' NOTICE OF REMOVAL, on the following parties at the following addresses:

Leah Greenwald
Benjamin Haile
Haile Greenwald, LLP
620 S.W. Main St., Suite 616
Portland, Oregon 97205
Of Attorneys for Plaintiff

by mailing to them a true and correct copy thereof, certified by me as such, placed in a sealed envelope addressed to them at the address set forth above, and deposited in the U.S. Post Office at Portland, Oregon, on said day with postage prepaid.



David C. Lewis, OSB #95334